



**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 212 and 252**

**[Docket DARS-2022-0027]**

**RIN 0750-AL71**

**Defense Federal Acquisition Regulation Supplement: Removal of  
Pilot Program for Acquisition of Military-Purpose  
Nondevelopmental Items (DFARS Case 2022-D022)**

**AGENCY:** Defense Acquisition Regulations System, Department of  
Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule to amend the Defense  
Federal Acquisition Regulation Supplement (DFARS) to remove the  
Pilot Program for Acquisition of Military-Purpose  
Nondevelopmental Items, since the statutory authority for the  
program has expired.

**DATES:** Effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL  
REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Ms. Jeanette Snyder, telephone  
703-508-7524.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD is issuing a final rule to remove DFARS subpart 212.71,  
Pilot Program for Acquisition of Military-Purpose  
Nondevelopmental Items, and the solicitation provision at DFARS

252.212-7002, Pilot Program for Acquisition of Military-Purpose Nondevelopmental Items. Section 866 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2011 (Pub. L. 111-383; 10 U.S.C. 2302 note) authorized the pilot program for a 5-year period through January 6, 2016, and the pilot program was implemented in the DFARS by publication of an interim rule at 76 FR 38048. Subsequently, section 814 of the NDAA for FY 2014 extended the pilot program through December 31, 2019, and this sunset date was implemented in the DFARS by publication of a final rule at 79 FR 17446 on March 28, 2014. Since the pilot program expired on December 31, 2019, the program is being removed from the DFARS. No contracts were awarded as a result of this pilot program.

## **II. Publication of This Final Rule for Public Comment Is Not Required by Statute**

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is 41 U.S.C. 1707, Publication of Proposed Regulations. Subsection (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment

because it merely removes obsolete text from the DFARS for a pilot program that did not result in the award of any contracts by DoD; therefore, this final rule does not impact the Government, contractors, or offerors.

### **III. Applicability to Contracts at or Below the Simplified Acquisition Threshold, for Commercial Products Including Commercially Available Off-the-Shelf Items, and for Commercial Services**

This rule does not create any new solicitation provisions or contract clauses. Although this rule removes the provision at DFARS 252.212-7002, Pilot Program for Acquisition of Military Purpose Nondevelopmental Items, it does not impact any other existing solicitation provisions, contract clauses, or prescriptions for the use of solicitation provisions or contract clauses.

### **IV. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section

6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

## **V. Congressional Review Act**

As required by the Congressional Review Act (5 U.S.C. 801-808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

## **VI. Regulatory Flexibility Act**

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501-1, and 41 U.S.C. 1707 does not require publication for public comment.

## **VII. Paperwork Reduction Act**

This proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

## **List of Subjects in 48 CFR Parts 212 and 252**

Government procurement.

**Jennifer D. Johnson,**

*Editor/Publisher, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 212 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 212 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

**PART 212—ACQUISITION OF COMMERCIAL ITEMS**

**Subpart 212.71 [Removed and Reserved]**

2. Remove and reserve subpart 212.71, consisting of sections 212.7100, 212.7101, 212.7102, 212.7102-1 through 212.7102-3, and 212.7103.

**Part 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**252.212-7002 [Removed and Reserved]**

3. Remove and reserve section 252.212-7002.